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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/791,948	03/03/2004	Warren S. Taranow	TNW-10002/29	4130

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GIFFORD, KRASS, SPRINKLE, ANDERSON & CITKOWSKI, P.C
PO BOX 7021
TROY, MI 48007-7021

EXAMINER

PATEL, TARLA R

ART UNIT	PAPER NUMBER
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3772

MAIL DATE	DELIVERY MODE
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07/13/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/791,948

Applicant(s)

TARANOW, WARREN S.

Examiner

Tarla R. Patel

Art Unit

3772

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 4/24/07.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Amendment

1. The amended specification is submitted on 4/24/07, acknowledged and approved by examiner.

Response to Arguments

2. Applicant's arguments with respect to claim 1 have been considered but are moot in view of the new ground(s) of rejection.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1-3, 5-7, 10-12 and 14-20 rejected under 35 U.S.C. 103(a) as being unpatentable over Wirtz (4,657,003) in view of Ruscito et al. (5,573,501).

Wirtz discloses a body-worn implement or immobilizer device (10) including a flexible sleeve/envelope (column 3 lines 17-19) an ankle or body of a wearer (figures 7-8, 13,16, and 17) having an inner surface encircling a portion of the body (figures 7-8,13,16, and 17) of a wearer creating a space

between the inner surface and the wearer's skin (space shown in fig 3), a port (25) on the sleeve to facilitate evacuation of the space that the inner surface contact with wearer's skin (column 6 lines 22-25). A fastener (22) is permanently attached to the sleeve. Fastener also can be of hook and loop type fastener (column 5 lines 40-51). The device also further discloses an intermediate layer (nylon fabric, column 5 lines 14-17) between the sleeve and the skin of the wearer, which is made by non-woven and porous textured sheet or perforated (nylon, inherently is porous) materials.

Wirtz further disclose the device can be used whole body (column 1 lines 19-22) as required by claims 10-12, 14-16.

Wirtz does not disclose that device can be used for prosthetics and further with respect to claims 2-3,5, Wirtz does not disclose and device including stiffening or hinged member attached to sleeve.

However Ruscito teaches a orthotic device can be used for prosthetics (column 8 lines 3-11) and also hinge member (22,20) attached to device and device is capable of being used with a prosthetic device of a foot, leg, hand, arm, shoe or boot, further the device is capable of encircling the body in combination with the prosthetic devices. At the time of invention was made, it would have been obvious to one having ordinary skill in art to use

the device of Wirtz to be used on prosthesis and having hinge member, as taught by Ruscito to accommodate the user wearing prosthesis and have more flexibility of the device with hinge.

5. Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Wirtz (4,657,003) and Ruscito et al. (5,573,501) further in view of Nauert (6,402,711).

Wirtz and Ruscito substantially disclose the invention, see rejection to claims 1-3, 5-7, 10-12 and 14-20 above; however Wirtz and Ruscito do not disclose that brace has a hinge attached to the sleeve using a male-female mechanical connector.

However Nauert discloses knee brace including an operating hinge with an upper (43) or male and lower (49) or female mechanical connector. At the time of the invention was made, it would have been obvious design choice to modify the hinge of Wirtz and Ruscito by substituting the male-female connector to hinge part, as taught by Nauert to provide upper and lower connector, since substitution of parts which provide the same function, in this case that of connecting the sleeve and orthotic via a hinge connection and limiting the angular displacement of the device, would be within the level of ordinary skill in the art.

6. Claims 8 and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wirtz and Ruscito (501) further in view of Detty (5,472,413).

Wirtz and Ruscito substantially disclose the invention, see rejection to claims 1-3, 5-7, 10-12 and 14-20 above; however Wirtz and Ruscito do not disclose that brace includes a thermal-insulating layer inside the sleeve. However Detty discloses a knee and elbow brace is made having a thermal-insulating layer. At the time of the invention was made, it would have been obvious to one skilled in art to make the layer of the Wirtz and Ruscito's device to include the thermal insulating material, which is taught by Detty to maintain an elevated temperature at the joint of the user's body.

Conclusion

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Habermeyer et al. (5,399,152) discloses an apparatus for treating fractures in extremities by deformable and evacuable vacuum-tight cushions having at least one valve.

8. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE**

FINAL. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tarla R. Patel whose telephone number is 571-272-3143. The examiner can normally be reached on M-T 6-3.30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Patricia Bianco can be reached on 571-272-4940.

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The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

TP

Patricia Bianco
PATRICIA BIANCO
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3700
7/9/07